

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

In re: **BRIDGESTONE/FIRESTONE, INC.,** ) Master File No. **IP 00-9373-C-B/S**  
**TIRES PRODUCTS LIABILITY LITIGATION** ) **MDL NO. 1373**  
\_\_\_\_\_) )  
**THIS DOCUMENT RELATES TO ALL** )  
**ACTIONS** )

**ENTRY ON FIRESTONE’S MOTION FOR A PROTECTIVE ORDER AND PLAINTIFFS’  
MOTION TO COMPEL REGARDING THE DEPOSITION OF DR. DENNIS GUENTHER**

This cause is before the magistrate judge on the motion of defendant Bridgestone/Firestone North American Tire LLC (“Firestone”) entitled Motion for a Protective Order as to the Deposition of Dr. Dennis Guenther and the plaintiffs’ responsive motion entitled Motion to Compel Production of Dr. Dennis Guenther or Alternatively, Motion to Reopen Factual Deposition Period for Sole Purpose of Deposing Guenther in Response to Bridgestone/Firestone’s Motion for a Protective Order as to the Deposition of Dr. Dennis Guenther. The motions are fully briefed, and the magistrate judge, being duly advised, **GRANTS** Firestone’s motion and **DENIES** the plaintiffs’ motion for the reasons set forth below.

Dr. Guenther is an engineering professor and automotive engineering expert whom Firestone hired in late 2000 to conduct certain testing and provide Firestone with his opinion regarding the Ford Explorer, and presumably the Explorer’s role in causing, both generally and specifically, the accidents and injuries at issue in this MDL proceeding. Firestone initially disclosed Dr. Guenther as a testifying expert witness in the class action and in certain of the personal injury cases in this MDL and produced to the plaintiffs the reports he had prepared for Firestone. Firestone later decided that it would not use Dr. Guenther as a testifying expert in any MDL case, and withdrew its designations of him as an expert. Dr. Guenther continues to serve as a consulting expert to Firestone.

The instant motion involves the plaintiffs’ request to depose Dr. Guenther. Firestone

objects to the plaintiffs' request, arguing that the plaintiffs are not entitled to conduct discovery regarding Dr. Guenther's opinions or work for Firestone pursuant to Federal Rule of Civil Procedure 26(b)(4)(B), which provides, in relevant part:

A party may . . . discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or preparation for trial and who is not expected to be called as a witness at trial only . . . upon a showing of exceptional circumstances under which it is impracticable for the party seeking discovery to obtain facts or opinions on the same subject by other means.

It cannot be genuinely disputed that Dr. Guenther was "retained . . . by [Firestone] in anticipation of litigation or preparation for trial." He was hired by Firestone's outside counsel in late 2000, after numerous lawsuits already had been filed against Firestone and Ford involving the same issues raised in this MDL. There is also no dispute that there are no "exceptional circumstances" preventing the plaintiffs from obtaining facts and opinions regarding the Explorer from other sources, inasmuch as numerous testifying experts on that subject have been named by the various parties in this MDL.

The plaintiffs argue, however, that in addition to his role as a non-testifying expert, Dr. Guenther should be considered a fact witness because he "has served significantly in other roles, including that of preparing reports that were the basis of Firestone's submissions to the NHTSA and Congress." The plaintiffs also point to the fact that Firestone has produced certain reports prepared by Dr. Guenther, and has even included Dr. Guenther's opinions regarding the Explorer in various press releases—in other words, Firestone has not treated Dr. Guenther's opinions confidentially. The fact remains, however, that Dr. Guenther will not testify in any action in this MDL, and any information relevant to this MDL that Dr. Guenther may have was acquired because of his role as an expert hired by Firestone in anticipation of litigation. Under the clear terms of Rule 26(b)(4)(B), therefore, the plaintiffs are not entitled to depose Dr. Guenther or conduct

discovery regarding “facts known or opinions held” by him. Accordingly, Firestone’s motion for a protective order is **GRANTED** and plaintiffs’ motion to compel is **DENIED**.

ENTERED this \_\_\_\_\_ day of July 2002.

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V. Sue Shields  
United States Magistrate Judge  
Southern District of Indiana

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